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Current Topics.

Mr. Justice Vaisey.

THE appointment of Mr. HARRY BEVIR VAISEY, K.C., D.C.L., to be one of the justices of the Chancery Division of the High Court of Justice has given general satisfaction. Mr. Justice VAISEY was deservedly popular at the Bar, not only for the distinction and ability with which he handled his cases, but also for his unfailing kindness to all with whom he came into contact, whether as friend or opponent. His exceptional clarity of intellectual vision will, we hope, help to unravel many a tangle for many years to come. Mr. Justice VAISEY was born in 1878, called to the Bar in 1901, and made a silk in 1925. He was educated at Shrewsbury School and Hertford College, Oxford, where he obtained a first in Classical Moderations and first in Literal Humaniores. Besides being a Chancery lawyer of eminence and distinction, Mr. Justice VAISEY is also a well-known ecclesiastical lawyer. In 1928 he became Chancellor of the Derby and Wakefield Dioceses, in 1930 he became Chancellor of the Carlisle Diocese and of York in 1934, when he became Vicar-General of the Province of York. In 1942 he became Commissary General of the diocese of Canterbury.

Settlements and the Daily Cause Lists

IT is more than ever necessary that the time of His Majesty's judges should not be wasted, and the recent statements of VISCOUNT CALDECOTE, L.C.J., and CHARLES, J., on the subject of the settlement of High Court actions will not go unheeded by solicitors. On 11th January the LORD CHIEF JUSTICE said that his attention had been directed to the difficulty experienced in making up the daily cause list in the King's Bench Division owing to the almost complete disregard of Ord. 36, r. 29 (6). That rule imposed a duty on all parties to any cause or matter entered in any of the said lists to furnish without delay to the officer by whom the list is kept all available information relating to any settlement, or likelihood of settlement, of the cause or matter, or affecting the estimated length of the trial. The inconvenience caused by the neglect of a proper observance of that rule was amply illustrated towards the end of last Sittings when, of the ten cases which were put into the daily cause list for hearing by six judges, only two were effective. Of the others five were settled and were mentioned to the court, one was struck out because neither side appeared when the case was called on, and two were stayed as the parties were not ready to proceed. The court was only informed of what had happened at the sitting of the court. Of those eight cases which were non-effective, in only one instance had the Chief Associate been notified that the case either had been, or probably would be, settled. Unless a very strict observance of Ord. 36, r. 29 (6), was maintained by solicitors, either the time of the court would be wasted or litigants would be kept waiting unnecessarily for a decision of their disputes. His lordship added that in the report of the Royal Commission on the Dispatch of Business at Common Law, 1934–36, para. 166, it was stated: "If necessary, a penalty must be imposed for failure to comply with this duty, but it will probably suffice if the Lord Chief Justice makes from time to time in open court such comments as are necessary on any failure to co-operate in this vital matter." He trusted, therefore, that the observations which he had made might be sufficient, and that the suggested alternative would not have to be brought into force. On 14th January a civil action was struck out at Bedfordshire Assizes as neither the parties nor their representatives had attended on the day of the hearing. Mr Justice CHARLES said it was the duty of solicitors who were engaged in cases which were not to be tried to give notice to the associate, so that the court might not be misled as to the work it had to do. His lordship said that solicitors should take warning that if notice of abandonment or settlement of a claim is not given within the required periods which on circuit is eleven days before the hearing of the cause, the solicitors render themselves liable to have to pay the costs themselves.

Divorce Litigation.

ASQUITH, J., in his admirable letter to *The Times* of 6th January, referring to the Emperor CALIGULA who made his horse a senator, to show his contempt for the forms of Roman democracy, said that the Emperor CALIGULA could have sent his horse to deal with much of the undefended divorce work on circuit. This semi-humorous observation was obviously intended to convey the view that High Court judges had more difficult work to do and the undefended divorce work on circuit impeded this. MACKINNON, L.J., went a little further in *The Times* of 8th January in describing the undefended divorce cases on circuit as a "duty of puerile but degrading simplicity"; the judge's "junior clerk could do it." His lordship suggested: (1) abolish the Probate, Divorce and Admiralty Division; (2) create in its place an Admiralty and Commercial Division; (3) transfer probate work to the Chancery Division; (4) assign defended divorce cases to the King's Bench Division; (5) create a new set of inferior judges, or officials, partly in London and partly in provincial centres, who should deal with undefended divorce petitions. CROOM-JOHNSON, J., followed on 11th January with a letter containing an alternative proposal, that the matrimonial jurisdiction of petty sessions should be extended to cover undefended divorces as they already deal with matters more important and more difficult than undefended divorces. This would, his lordship wrote, eliminate a good deal of the expense caused to people of humble means, and would save the time of judges and petitioners. Petitions could be transferred from the registry when it was seen that they were undefended. Questions of access and variations of settlements could be dealt with by the Chancery Division. Mr. CLAUD MULLINS, writing to *The Times* of 15th January, doubted whether magisterial domestic courts would ever be good enough or suitable to make final decrees of divorce, but said that there would be one advantage of giving the jurisdiction to magistrates, and that was that the cases would then pass through their conciliation machinery, which placed no barrier against the obtaining of legal rights, but offered means by which the parties could look all round their problems before claiming such rights. Mr. F. HUBERT JESSOP, President of the Associated Law Societies of Wales, wrote in the same issue that there was a growing public opinion that the unpaid magistracy should be abolished and its work undertaken by trained lawyers, but urged that undefended divorce work should be relegated to a competent local tribunal. Judging from this correspondence, there seems to be a large body of informed opinion to the effect that the judges of the High Court should be relieved of the necessary but monotonous task of granting decrees in the ever-growing number of undisputed cases. Later letters also show that there is a large body of opinion who hold the contrary view held by all the committees that have ever considered the matter, including the latest, that no one under the rank of High Court judge should be entrusted with these duties.

Reinstatement in Employment.

THE present law as to reinstatement of employees in their old work after their war service is contained in the National Service Acts and in reg. 60DA of the Defence (General) Regulations, 1939. A new Reinstatement in Civil Employment Bill, the text of which was published on 13th January, seeks to consolidate, extend and amend the existing law on the subject. At present the law only applies to men and women called up under the National Service Acts, but the new Bill seeks to apply it also to volunteers in the armed forces and the women's auxiliary services as well as to men and women giving whole-time service in the civil defence forces in consequence of an enrolment notice under

the National Service Acts. The Women's Land Army is not included in the scope of the Bill, nor does it apply to Home Guards who are mustered to resist invasion. If a person wishes to exercise his rights under the Bill he must apply in writing to his former employer not later than the fifth Monday after the end of his war service. Either then or later he must give his former employer a date on which he will be available for employment, such date not to be later than the ninth Monday after the termination of his war service. Sickness or other reasonable cause is to be a ground for extending either period. The employer must effect the reinstatement at the earliest practicable opportunity, and if it is not reasonably possible to do so at once the applicant should renew his application every thirteen weeks in order to keep it open. The terms, occupation and conditions of his new employment must be no less favourable than they would have been if he had not joined the services, or, if this is impossible, they must be as favourable as possible. The employer must employ the reinstated applicant for the following twenty-six weeks, or for as much of that period as is reasonable and practicable. Any change to the employee's detriment may take place only when it is absolutely necessary, and then only the most favourable alternative employment must be given. Seniority in employment must be given preference, and there can be no reinstatement where that can only be done by dismissing someone else who, before either of them joined the services, was longer in the employment than the applicant. A former employer is not obliged in any case to take an applicant into his employment after six months from the end of the present emergency, a date to be fixed by Order in Council. An application for reinstatement must be addressed to the employer with whom the applicant was serving during the period of four weeks immediately preceding the applicant's war service. Reinstatement committees will be appointed by the Ministry of Labour and National Service to deal with disputes. Assessors will be appointed to assist the committees, and there will be umpires and deputy umpires to hear appeals from the committees' decisions. A committee will have power to award compensation in lieu of reinstatement, and such compensation is not to exceed the amount of remuneration to which the applicant would have been entitled if the employer had discharged his statutory obligation for the required period. A court of summary jurisdiction will be empowered to impose a maximum fine of £50 on an employer for failure to comply with an order for reinstatement, and may also order the employer to pay compensation to the applicant, a sum not exceeding the maximum amount which he would have been liable to pay by way of remuneration.

Soviet Justice.

THE greatest services that can be rendered to any friendship, whether international or personal, are the granting of the proper need of praise to merits and a disinclination to look for faults. Both of these services are admirably performed in a booklet recently issued by the Haldane Society and W. H. Allen & Co., Ltd., under the title "Soviet Justice," by Ralph Millner, M.A. (Cantab.), Barrister-at-Law. In studying the judicial system of another country, it is wrong to compare it, either favourably or unfavourably with our own, without taking into account the differences in the historical, social, economic and intellectual growth in the two countries. Nor is it possible to measure the comparative proximity which either system reaches to the ideal of abstract justice to which all well-meaning Governments strive. In both the U.S.S.R. and the United Kingdom the test laid down by Plato in his Republic has been proved true by recent events: "Because, Thrasymachus, injustice breeds divisions and animosities and broils between man and man, while justice creates unanimity and friendship." Both the unity of this country when it stood alone, and the unity of Russia, in the face of an unprecedented onslaught, have been the admiration of the world. In a foreword to the booklet, Mr. D. N. PRITT, K.C., M.P., rightly stresses the fundamental differences between the social structures of Britain and the U.S.S.R., and in particular, the fact that the constitution of the U.S.S.R. is of a complicated federal character. The author's facts and figures are, obviously, based on research into the official decrees and reports. Solicitors will be interested to learn that in May, 1938, the People's Commissar for Justice of the Soviet Union issued instructions forbidding the practice of "devilling," and requiring the selection of a substitute in cases where the lawyer chosen is unable to act, to be made by the "director" of the chambers. Incidentally, all fees coming to a set of barristers' chambers are paid into a common fund, out of which, after expenses are paid, the members of chambers divided up their shares, according to the number and difficulty of the cases that they have handled and to their skill and experience. Complaints against lawyers must be made within one year of the cause of complaint arising, and disposed of within one month thereafter. Among charges which may lead to penalties ranging from a warning to expulsion from the profession, are "lateness at court, a discourteous attitude to the court, slovenliness and negligence in their work, conducting frivolous actions and giving careless advice." The author notes the public-spirited outlook of the legal profession in the Soviet Union, and its readiness to give specific social services to the community. In this respect the notable gratuitous services performed by solicitors and barristers to poor litigants in this country furnish a useful comparison. Justice, according to Plato, exists where each organ in a community performs its own function without strife with or interference from any other organ. One may add as a corollary to this the categorical imperative of Kant, that every person must be treated as an end in himself, or, in other words, the sacred rights of the individual must be preserved and guaranteed. Interchanges of information such as this form a valuable contribution to the future peace of the world.

Traffic Accidents.

COMPLACENCY is as much a vice in peace as in war. It has been nowhere more apparent in the past than in the treatment by the community of the serious problem of road accidents. The present lack of public interest in the subject may be partly due to the recent drop in war-time road accident figures. A correspondent, Mr. MILES THOMAS, writing from the Nuffield Organization to *The Times* of 5th January, contended that it would be dangerous to conclude from the figures that the standard of road-faring these days is higher than before the war. Judged by pre-war road usage, he wrote, the total road mileages covered are greatly reduced, and this puts the present rate of accidents in its proper light. The writer proceeded to refer to bad habits in the black-out, such as defective side and rear illumination, and the flashing of torches across the vision of the motorist. If the standard of road-faring is as bad as it was before the war, as the writer states, then the problem is both serious and urgent. In the twenty years between the end of the last war and 1938, according to a recent calculation, over 100,000 people were killed and over 3,000,000 people were injured on the roads of Great Britain. This figure, to quote from an article by Dr. C. E. M. JOAD, in *The New Statesmen* of 19th June, 1943, is in excess of the British casualties in the last war. It is estimated that more than 20,000 of the killed and 600,000 of the injured were children under fourteen years of age. As regards pedestrians, it is generally accepted now that four-fifths of the total number of casualties occur among children and elderly persons. "Road Accidents in War-Time," a pamphlet recently issued by the Ministry of War Transport, notes a certain laxity on the part of drivers in observing the rules of the highway code. The reduction or withdrawal of mobile police patrols is specifically referred to as one of the causes of the tragic situation in existence to-day. It also recognises that "the undeveloped faculties of the young and the waning faculties of old people are inadequate to cope with present-day traffic conditions." Mr. P. J. NOEL-BAKER, Parliamentary Secretary to the Ministry of War Transport, in his recent address to the annual meeting of the Pedestrians' Association, attached importance to education and road engineering as a means of reducing accidents, but we are inclined to agree with the view expressed by VISCOUNT CECIL at the same meeting, when he said that the real difficulty was the combination at what speed the motor vehicle travelled and the weight it represented, the result being that quite a small collision could produce serious results. It may also be agreed that that is a very good reason for ceasing to apply the same rules to collisions between motor vehicles as were applied in the old days when horse carriages were in general use. Whether it would be practicable, as VISCOUNT CECIL suggests, to apply the rule in *Rylands* v. *Fletcher*, of absolute liability to all motor vehicles travelling at twenty miles an hour and more on certain roads, is a somewhat more difficult question. Certainly some drastic remedy must be sought if this menace to our civilisation is to be checked.

Recent Decisions.

In *R.* v. *Archbishop of Canterbury, ex parte Morant*, on 12th January (*The Times*, 13th January), the Court of Appeal (THE MASTER OF THE ROLLS, MACKINNON and DU PARCQ, L.JJ.) held that the power of a bishop and an archbishop to review and to refuse to approve of an appointment to a living, under s. 3 (2) (ii) (*b*) of the Benefices (Exercises of Rights of Presentation) Measure, 1931, was not a quasi-judicial function subject to *certiorari* or *mandamus*, and not a *lis inter partes*, and the archbishop was therefore entitled to allow himself to be influenced by the contents of a confidential letter without disclosing it to the appellant.

In *Davies* v. *Smith*, on 12th January (*The Times*, 13th January), a Divisional Court (HUMPHREYS, ATKINSON and CASSELS, JJ.) held on a case stated that the appellant had been rightly convicted of an offence against reg. 58A of the Defence (General) Regulations, 1939, in failing to comply with a direction given to him by a national service officer to perform such services in the United Kingdom as were specified in the direction as a junior medical officer, Class B1, at the Park Hospital, Wellingborough. The court held that it was irrelevant that the appellant had conscientious objections to giving allopathic treatment to patients, and the only question was whether he was capable of performing the duties. It was for the national service officer to make up his mind on this, and the court was bound to approach the case on the basis that the national service officer was a fair-minded person anxious to perform his duties fairly.

Best Evidence as to the Condition of Articles.

It is one of the more elementary rules of the law of evidence that the best evidence must be given in both civil and criminal matters to prove any relevant fact. Thus, when a transaction is evidenced by a writing as in the case of a written contract the writing must be produced or accounted for. In the *Permanent Trustee Company of N.S. Wales* v. *Fels* [1918] A.C. 879, it was held that it would be improper for the court to rely upon a copy or the recollection of witnesses as to the contents of a document when the document itself is available for reference.

It may well have been that the learned magistrate in the recent case of *Hockin* v. *Ahlquist Brothers, Ltd.* (1943), 2 All E.R. 722; 87 Sol. J. 410, had this rule relating to documents in mind when dismissing the information made in the following circumstances. The defendants were charged with having manufactured certain garments with more pockets and buttons than were permitted by law. Evidence was given by a witness for the prosecution that he had found the garments not to comply with the regulation controlling the making of clothing. The garments were not actually produced in court. The defendants contended that the best evidence as to the condition of the garments had not been given, as the garments had not been produced. This contention was accepted by the court, but rejected on appeal.

Cases of infringement of copyright furnish the earliest case law on this point. Thus, in *Holdsworth* v. *McCrea* (1867), L.R. 2 H.L. 380, it was held that the most satisfactory way of proving a breach of copyright was to appeal to the eyesight or hearing of the judge. In the earlier case of *Boosey* v. *Davidson* (1849), 13 Q.B. 257, it was held that questions of resemblance, but not of appearance (i.e., shape, design, etc.) must be proved by production of the article which is alleged to be an infringement of the plaintiffs' copyright. In *Lucas* v. *Williams & Sons* [1892] 2 Q.B. 113, C.A., it was held that in an action for infringement of copyright in a picture it was enough if a witness says that he knows the original and that the work complained of is an exact copy. There is no need in such a case to produce the original picture. Viscount Caldecote, L.C., in *Ahlquist's* case, quotes with approval Lord Esher, M.R., who in *Lucas'* case said the following about the evidence required in these cases: "Different kinds of evidence may be used to prove the same fact, and this is another way of proving the fact that the picture which the defendant sold is a copy of the original picture of which there is a copyright. If the jury were not satisfied, it would be open to them to say: 'You could have produced better evidence; you have not produced the original picture; we will not act upon this evidence, though it is legal evidence.'" It must be noted that the judge may in any case demand to see the article in question to arrive at a proper conclusion, although the production of the article is not necessary according to the rule as here stated.

In *R.* v. *Francis* (1874) L.R. 2 C.C.R. 128, it was laid down that production of the article is not necessary where the issue is as to the state of a chattel. In *R.* v. *Francis* the accused had attempted to pass off a false ring as a genuine diamond when trying to obtain a loan from a pawnbroker. Lord Coleridge, C.J., at p. 132, said: "It was objected that the evidence of what took place in Worcester was not properly received, because the cluster ring which he there attempted to pass was not produced in court, and that the evidence of two witnesses who saw it, and swore to its being false, was not admissible. No doubt if there was not admissible evidence that the ring was false, it ought not to have been left to the jury; but though the non-production of the article may afford ground for observation more or less weighty, according to circumstances,, it only goes to the weight, not to the admissibility, of the evidence." It is probably not quite correct to describe evidence by witnesses as to the state of certain articles as secondary evidence. Thus it was held to be good evidence for witnesses to speak as to an inscription on a tombstone (*The Tracy Peerage* (1843), 10 C. Fin. 154 H.L.) or an inscription or devise on a banner or flag displayed at a public meeting (*R.* v. *Hunt* (1820), 3 B. & Ald. 566), or a placard or poster on a wall (*Owner* v. *Bee Hive Spinning Co., Ltd.* [1914] 1 K.B. 105).

The cases show that the rigid rule as to the best evidence of documents does not apply to proof of the condition of articles. Evidence as to the condition of articles can be given by witnesses who speak of their own observations. The fact that the article itself though available is not produced, would no doubt affect the weight of the evidence of such witnesses. But, as Lord Coleridge stated in *R.* v. *Francis*, this does not affect the admissibility of such evidence. Evidence by such witnesses is not "secondary evidence." The final paragraph of Viscount Caldecote L.C.J.'s, judgment in *Ahlquist's* case, states the law concisely on this point: "It is much too late, even if it was ever possible, to suppose that evidence about the nature of chattels cannot be given to people who have seen them and speak of their condition. To suppose that there ought to be produced in court all the articles about which issues are raised in a great variety of cases would lead to consequences which would show how impossible the rule would be in practice."

The decision of the Divisional Court in *Hockin* v. *Ahlquist Brothers, Ltd.*, does confirm the law as set out in *Lucas* v. *Williams and Sons*. The judgment of Lord Esher, M.R., in the latter case, in so far as it deals with the weight of different kinds of evidence, must be regarded as a warning to the lawyer who has to consider whether he should rely only on the evidence of witnesses as to the condition of articles. It would probably be inadvisable to fail to produce such an article unless very good reasons were given to the court for its non-production. The evidence of a witness speaking of the condition of the article, though admissible in law, may well be found to be ignored in fact where no sufficient explanation for the non-production of the article is given.

A Conveyancer's Diary.

1943. Chancery—IV.

The next group of cases consists of a few dealing with, or connected with, matters of equity proper. In *Re Shepherd* [1943] Ch. 8, the question was whether the testator's son had elected. The testator, who died in 1920, made a will giving a life interest in residue to his widow, who survived until 1941. Subject thereto, and apart from one or two small dispositions, he gave the residue to his son, Major Shepherd, for life, on protective trusts with a gift in remainder to the children of Major Shepherd. He then recited that Major Shepherd was entitled to certain interests in the estate of one Colonel Lambert Pole, who had died in 1906, and declared that Major Shepherd "shall not become entitled to any interest under this my will unless and until he shall execute a settlement of his interests under the said will of the said Lambert Pole, providing life interests for himself and his wife if she survive him and unless and until she marry again, it being my intention that my said son shall be put to his election whether he shall receive any benefit under this will." It is rather curious that the testator did not say who was to get the ultimate interests under the proposed settlement; the summons apparently covered other points than that which is reported, one of which may have been as to this part of the will; in the end it did not matter. It is, perhaps, worth noting that the election was expressly raised by the testator's will. Such a plan seems to me much preferable to that of letting it arise by implication of equity; the same result would have been achieved by the latter method, if the testator had put into his will a clause disposing of the Lambert Pole fund as from the death of the survivor of Major Shepherd and his wife. Major Shepherd had one son, who was born in 1911, and was killed in action in May, 1941, a month before the death of the tenant for life. In 1932 Major Shepherd had written letters to the independent trustee of the testator's will and to the trustees of Colonel Lambert Pole's will, stating that he had elected to make the settlement required, but had not yet done so. He never in fact did so, and the present summons inquired whether he was at liberty to refuse to do so. Though the report does not say so, the point fairly clearly was that on the life tenant's death, being now childless, and of a fair age, Major Shepherd naturally did not wish to involve himself with a settlement: it also looks as if he may have been able to make himself absolutely entitled to the testator's estate, through an intestacy consequent upon failure of the ultimate trusts thereunder; but those trusts are not clearly enough stated for one to be certain. Bennett, J., held that no one was in a position to compel Major Shepherd to make a settlement. The letters of 1932 did not establish any contractual relationship between him and the addresses. Letters sent to persons having no interest in the matter could not raise an estoppel, nor could they raise any enforceable equity in favour of Major Shepherd's unborn children, who were the only persons who could now conceivably benefit by such a settlement. (Incidentally, even an unequivocal promise to settle on them would not have been enforceable in equity since they would be volunteers.) It is often difficult in practice to say whether election has actually occurred and the effect of this decision is to strengthen the position of a party who argues that it has not done so, save where it is unequivocal and has been communicated to an interested party. The doctrine of election is one fairly frequently met in practice if one is on the look out for it. Generally it arises by inadvertence, as where a life tenant of a house devises it: when that is so there is a temptation to disregard the gift altogether, saying "*nemo dat quod non habet*," but the more correct course is to see who is the remainderman of the house and whether the testator has given him anything else. If so, he is put to his election.

Mistake is a subject of interest in equity as well as at law. It is generally understood that equity will relieve against the consequences of mistake of fact, and that even at law money paid under a mistake of fact is recoverable in an action for money had and received. On the other hand, there is, in general, no remedy against the effects of a mistake of law, since *ignorantia juris haud excusat*. There is an intermediate class, however, in which, following *Cooper* v. *Phibbs*, L.R. 2 H.L. 149, it has been held that this maxim has no application to mistakes as to private rights. Lord Westbury pointed out that "*jus*" means the general law of the land and not private rights of ownership. The line between cases of this class and those of ordinary mistake of law is exceedingly difficult to draw. But *Sawyer and Vincent* v. *Window Brace, Ltd.* [1943] 1 K.B. 32, is a good example of a case

of mistake of law. The plaintiffs were lessors and the defendants were lessees of certain premises which were damaged by enemy action in 1940. Rent had been paid in advance. The tenants disclaimed the leases under the Landlord and Tenant (War Damage) Act, 1939. In August, 1941, Parliament enacted the Landlord and Tenant (War Damage) (Amendment) Act, 1941, under s. 13 of which it is provided that, upon disclaimer, rent paid in advance shall be proportionately recoverable by the tenant. In October, 1941, the tenants demanded repayment. The landlords questioned whether s. 13 had retrospective effect. In November, 1941, the tenants' solicitors replied that counsel had advised that the section was retrospective. Ten days later they wrote saying that they were now issuing proceedings, and three days later still the claim was paid. In January, 1942, in *London Fan and Motor Co., Ltd.* v. *Silverman* [1942] W.N. 56, Stable, J., held that s. 13 is *not* retrospective. The plaintiffs then re-claimed the money as money received to the plaintiffs' use. The defendants admitted the facts but said that they disclosed no cause of action, and so Croom-Johnson, J., held. The error made by the plaintiffs had been on the perfectly general question of law, whether s. 13 was retrospective, and not on any particular matter of private right. This rule may seem harsh in connection with a particular case, especially where the error is on the construction of a new statute. But, after all, the courts are there to interpret statutes, and a question of such generality is a proper subject for litigation even by the most austere war-time standards. If the rule were otherwise, chaos would follow whenever an unexpected decision is given by a high tribunal. For example, the consequences of the *Fibrosa* case would have been extensive and very unhelpful. I suppose that the way in which " money " in a will is to be construed is a general matter of law, and not one of private right ; even on the existing rule as to mistakes of law there may well be repercussions of *Perrin* v. *Morgan;* were the rule otherwise, they would be very serious indeed.

Infants are the special charge of equity, and among other things the Court of Chancery had, and its sequels in title have, an inherent power to appoint guardians of the person of an infant during minority. This power was invoked by Bennett, J., in *Re D.* [1943] Ch. 305, where the infant was not a British national but had been brought here from Germany just before the war under the auspices of a body called " The Movement for Care of Children from Germany." The infant had no property in this country, and his relatives here were also refugees and unable to maintain him. Nor had any property been settled on him for the purpose of giving the court jurisdiction, as is most usually done. None the less, Bennett, J., held that the court had jurisdiction, relying on a passage near the beginning of the speech of Lord Langdale in *Johnstone* v. *Beattie* (1843), 10 Cl. & F. 42, 145 : " Amidst the differences of opinion which exist in this case it is satisfactory to me that no doubt is thrown upon the jurisdiction of the Court of Chancery to appoint guardians for any infant residing in England . . ." Though the decision of Bennett, J., does not actually involve any new proposition, it is agreeable to have on record so clear a statement of the breadth of the jurisdiction. There is far too common a superstition that the jurisdiction is grounded on property, an error which is strengthened by the practice of making settlement on infants in respect of whom Chancery proceedings are envisaged. This inherent Chancery jurisdiction to protect any and every infant in this country who stands in need of protection by appointing a guardian is not to be confused with the statutory jurisdiction of several different courts to appoint guardians or provide for care and custody in particular instances, as, for instance, that of the Divorce Court in respect of the children of its suitors, or that under the Guardianship of Infants Act, 1925. It is also to be distinguished from the court's power to make an infant a ward of court, which puts the infant more directly under the court's own control.

The other infancy case was *Ballett* v. *Mingay* [1943] 1 K.B. 281 : the plaintiff had lent an amplifier and a microphone to the defendant, an infant of eighteen years old, it being agreed that the defendant should pay a weekly sum for the loan. Later the plaintiff asked for them back, but by then the defendant had parted with possession of them. The only point reported is the defendant's plea of infancy, which was rejected by the learned county court judge and by the Court of Appeal. The latter held that the plaintiff was entitled to sue the infant in detinue, and that to do so was not merely a way to evade the rule that an infant cannot, generally, be sued in contract. This defendant, by parting with the goods, had gone right outside the bailment : the case was like *Burnard* v. *Haggis*, 14 C.B. (N.S.) 45, where an infant bailee of a mare, who had been told by her owner not to jump her, lent her to a friend who did jump her and killed her in doing so. He was liable, notwithstanding the original bailment. The contrary was the case in *Jennings* v. *Rundall* (1799), 8 T.R. 335, where an infant, having hired a mare, rode her carelessly, so that she was injured. In doing so he was not going outside the contract of hire, and the attempt to make him liable in tort failed.

The construction of a restrictive covenant imposed on the vendor of a business was considered by Bennett, J., and the Court of Appeal in *Batts Combe Quarry, Ltd.* v. *Ford* [1943] Ch. 51. The first defendant was one of the vendors of Batts Coombe Quarry. On the sale the vendors covenanted with the plaintiffs, who were the purchasers, " that they would not within ten years either solely or jointly with or as agent officer manager servant director or shareholders of any other person or company directly or indirectly carry on or assist in carrying on or be engaged concerned interested or employed in the business of a quarry within seventy-five miles as the crow flies of Batts Combe Quarry. Within the ten years one of the vendors put up the money to enable his three sons to buy a neighbouring quarry and for working capital. He was not a partner in the sons' business, nor was he financially interested in it, nor did he take any part in its management. Bennett, J., held that this activity (or lack of it) on the vendor's part did not infringe the covenant. The ground for this decision seems to have been (though it is not directly reported) that the words " assist in carrying on " had, as a matter of construction, to be read with the words " agent, officer, manager," etc., so that the covenant would not be infringed by an activity not in one of those capacities ; it was, moreover, argued for the vendor that he was not " assisting in carrying on " the sons' business at all, as he had taken no part in it since it had started operations. The Court of Appeal disposed of the latter argument by saying that if a like covenant had been taken on the sale of a boot shop the argument would justify the vendor in helping his son to buy a neighbouring shop, stock it, and help to arrange the window display in advance of the opening date. As to the other argument, the Court of Appeal did not see any reason to limit the words " assist in carrying on " in the way suggested. The appeal was therefore allowed. The point upon which I suppose this case was reported is that it shows that one can " assist in carrying on " the business of A within the meaning of such a covenant, merely by offering A some help and good advice before he sets up and the initial capital which he needs ; no activity concurrent with the actual carrying on of the business is necessary.

The *Batts Combe* restrictive covenant was taken by the purchaser of a business. *Beak* v. *Robson* [1943] A.C. 352, dealt with a similar covenant between master and servant in a service agreement. The agreement was made in 1937 for the respondent to serve a company for five years as director and manager for £2,000 a year and bonuses. It was also agreed that if the respondent exercised an option for earlier determination of the agreement, which had been given him, or if the agreement came to an end because he infringed it, he should not be concerned in a similar business within fifty miles for the rest of the five years. In consideration of this covenant he was paid £7,000 on the signing of the agreement. The Crown tried to claim that the £7,000 was assessable to income tax, and failed at every stage from the General Commissioners to the House of Lords. As the Lord Chancellor said : " The sum of £7,000 is not paid for anything done in performing the services in respect of which he is chargeable under Sched. E." The case is the more remarkable that the covenant and payment were not in the usual way in respect of his activities after the end of the service contract by effluxion of time, but in respect of his activities if he freed himself from it before the due date. I can find nothing in the Finance Act, 1943, to make the more frequent use of this scheme impossible.

Books Received.

Report on Industrial Assurance, Approved Societies and Death Grant. By Six Members of the Tory Reform Committee.

Rent and Mortgage Interest Restrictions. By the Editors of " Law Notes." Nineteenth Edition. 1943. Demy 8vo. pp. xxviii and (with Index) 371. London : " Law Notes " Publishing Offices. 17s. 6d. net.

Municipal Internal Audits. By ARTHUR COLLINS, F.S.A.A. Seventh Edition. 1943. pp. viii and (with Index) 287. London : Gee & Co. (Publishers), Ltd. 20s. net

Patents and Licences of Right. pp. 16. London : Imperial Chemical Industries, Ltd.

Practice Direction.

ADOPTION OF CHILDREN ACT, 1926, AND AMENDING ACT.

PRACTICE DIRECTION BY THE JUDGES OF THE CHANCERY DIVISION.

On an application to adopt a legitimate child, where a parent of the child is dead and any grandparent of the child (being the father or mother of the deceased parent) is living, and the consent in writing of such grandparent to the adoption is not obtained and verified by affidavit, such grandparent must be made a respondent to the originating summons.

A. H. Holland,
Chief Master.

11th January, 1944.

Professional Announcement.

RAPER & Co., of Chichester, announce that CHARLES TAYLOR, the surviving partner, has as from the 1st January, 1944, taken into partnership FREDERICK GOULD STANDFIELD. The practice will continue to be carried on under the same firm name.

Landlord and Tenant Notebook.

More about unauthorised Alienation.

In my first two articles this year (88 Sol. J. 5 and 12) I put forward the suggestion that when Parliament passed ss. 5 (5) and 15 (3) of the Increase of Rent, etc., Act, 1920, both of which speak of premises being "lawfully sub-let," it may have been proceeding on the assumption that a sub-tenancy granted in breach of covenant was void; which, according to *Parker* v. *Jones* [1910] 2 K.B. 32, is not the case. And I concluded, in effect, that the meaning of the expression was open to doubt.

A correspondent has now offered some welcome criticism, making two points. The first is that I did not deal in any shape or form with the question of "notice" which arises out of *Imray* v. *Oakshette* [1897] 2 Q.B. 218 (C.A.).

The decision in that case turned, however, first, on the question of jurisdiction; secondly, on the question of principles applicable to granting or withholding of relief against forfeiture. The short facts were that one, L, purchased, under a contract containing no special conditions as to title, what was in fact a sub-underlease; he satisfied himself that that sub-underlease had been granted with the consent of the grantor to his vendor, but believed (so he deposed) that that grantor was the freeholder. In fact, the underlease had been granted without the consent required by the head lease, which contained a proviso for re-entry on breach of the covenant concerned. But apart from the facts that the habenda in head lease and underlease contained the words "less ten days" and "less twelve days" respectively, L had constructive notice of the defect in title; "he has constructive notice of everything he would have arrived at if he had acted reasonably and investigated the title in the proper way," as Rigby, L.J., put it.

What was in issue in the first place was whether the court had any *power* to grant L relief. For before 1st January, 1926, there was no power to grant relief for breach of a covenant against alienation, so the question was whether, in the face of this limitation, the unauthorised alienee came within the provisions of the Conveyancing Act, 1892, s. 4. Overruling Day, J., the court held that there was jurisdiction. But in view of the applicant's carelessness, it decided that he was not (though he had spent £500 on the property) worthy of relief. To quote Rigby, L.J., again: "Here is a gentleman proposing to take an underlease and bargaining that he would not investigate title although he was going to spend money on the property. I think I might stop there and say that he has no case."

I do not think that this decision can assist us to interpret the words "lawfully sub-let" where they occur in the Increase of Rent, etc., Act, 1920. If anything, it supports the theory I put forward, for it was never suggested that either the underlease or the sub-underlease was void, notice or no notice.

Our correspondent next observes that the 1920 Act makes no attempt to render the sub-letting of the whole of a dwelling-house (or of part, the remainder being already sub-let), or a sub-letting made after the commencement of proceedings for possession, unlawful, and therefore that the suggestion made by Eve, J., as to the meaning of "unlawful," in his judgment in *Roe* v. *Russell* [1928] 2 K.B. 117 (C.A.) (see 88 Sol. J. 12), appears to be somewhat strained, inasmuch as the Act makes no attempt whatever to render the particular forms of sub-letting referred to unlawful, but merely removes the general bar on the landlord's right to possession in the event of their occurring.

I agree, but before proceeding to discuss our correspondent's final and constructive suggestion, would observe that the same objection applies to the view that "lawfully sub-let" means "sub-let otherwise than in breach of a covenant against sub-letting." Also, I am not sure in what sense our correspondent uses the word "unlawful," and it is well known that that expression varies in connotation. In his speech in *Mogul Steamship Co.* v. *McGregor, Gow & Co.* [1892] A.C. 25, Lord Halsbury discussed at some length two senses in which the word was "not uncommonly, though, he thought, somewhat inaccurately used" in relation to contracts—briefly, void merely because the law would not enforce them, and not only void but giving rise to indictment. But the learned Lord Chancellor did not go on to say in what sense or senses the expression would be accurately used.

What our correspondent suggests is that property is not lawfully sub-let when the head lease contains an absolute covenant against alienation: in such a case, he urges, the so-called "sub-tenant" is and can be nothing but a trespasser.

Attractive as the suggestion is, I cannot see any ground for sub-dividing sub-tenants to whom property is sub-let in breach of covenant according as the covenant is absolute or qualified. In either case, if the head lease contains the usual forfeiture clause, the superior landlord can convert the sub-tenant into a trespasser, but it is difficult to see why he should be such *ab initio* in the one case and not in the other.

Further, if the sub-tenant be a trespasser, who can sue him for trespass? The head landlord, as long as he remains reversioner, has no cause of action. The mesne landlord is estopped. So I do not think that the "unlawfulness" contemplated by the 1920 Act can be trespass. And while agreeing with our correspondent's remarks on the judgment of Eve, J., in *Roe* v. *Russell*, I still think that "lawful" is a strange way of saying "not in breach of contract."

It is true, as our correspondent adds, that absolute covenants are becoming more common. Before the Landlord and Tenant Act, 1927, was passed, they were mostly limited to farm and licensed property; being often coupled, indeed, with a covenant to reside on the premises, the grantee having been selected for his personal qualifications: in the case of licensed premises, the landlord thus avoided all risk of such an argument as led to the litigation in *Mills* v. *Cannon Brewery Co.* [1920] 2 Ch. 38. Since the passing of the statute mentioned, absolute covenants have been favoured because they do not fall within s. 19 (1), which subjects covenants against assigning, sub-letting, etc., without licence or consent to a statutory proviso to the effect that such licence or consent is not to be unreasonably withheld. (I am aware that it has been thought that this converts all absolute covenants against alienation into qualified covenants, but do not think this contention easy to defend: if the Legislature had intended to qualify all such covenants, and not merely to qualify qualifications, it would hardly have inserted the words "without licence or consent.") It seems doubtful whether the Parliament which passed the 1920 Rent Act—a measure mostly concerned with "weekly properties"—gave much thought to absolute covenants against sub-letting; and, indignant as one may feel about a sub-letting by a tenant who has promised not to sub-let at all, one must bear in mind the age-long attitude of the courts, which have always frowned upon such restrictions. This may have been partly referable to their refusal to grant relief when the breach was well established; but by the time Law of Property Act, 1925, s. 146, extended their powers, the frown had become well set.

To-day and Yesterday.

LEGAL CALENDAR.

January 17.—On the 17th January, 1827, *Brunton* v. *Blackmore* was heard at the Guildhall sitting of the King's Bench. The plaintiffs had a patent in respect of a mode of constructing bonnets of cotton or silk braid knit or sewed together, after the manner of Leghorn bonnets, the plait, when formed and stiffened, being pressed on blocks to the desired shape. They brought an action for infringement of their patent, but despite the efforts of the great Mr. Scarlett on their behalf they were non-suited, for a Mrs. Susannah Crouch proved on behalf of the defendants that, upwards of twenty years before, she had made "frivolity bonnets" of the same sort of materials stiffened with isinglass.

January 18.—When George Foster was hanged before Newgate for murder, on the 18th January, 1803, scientific men were much engaged in investigating recent discoveries in the process of galvanism. The corpse was taken to a nearby house where Professor Aldini applied his electrical apparatus to it, producing a quivering of the jaws, contortion of the face muscles, the opening of one eye, the raising and clenching of the right hand, and movements of the legs and thighs. The Beadle of the Surgeons' Company, who was officially present, was so alarmed that he died of fright soon after his return home. There was no question of restoring the murderer to life, despite the expectations of the ignorant, for at the execution, his friends beneath the scaffold had very effectively tugged his legs to shorten his agony.

January 19.—The Right Honourable Stephen Lushington died at Ockham Park in Surrey on the 19th January, 1873, in his ninety-second year. He was called to the Bar in 1806, became a member of the College of Advocates in 1802, and throughout his forensic career was also active in the political field. In 1828 he was appointed judge of the Consistory Court of London. In 1838 he became judge of the High Court of Admiralty and was sworn a member of the Privy Council. In 1858 he was made Dean of the Arches. He retired from judicial office in 1867. He was an able advocate, a forcible Parliamentary speaker, a loyal Churchman and an ardent reformer, whether in the field of anti-slavery or the abolition of capital punishment. In the Court of Admiralty he acquired a high reputation for the accuracy and legal soundness of his decisions, which were rarely reversed.

January 20.—On the 20th January, 1823, at a quarter past nine in the morning, Giles East, a boy of sixteen, was executed on the top of the lodge of Horsemonger Lane Gaol for the rape of a child. Till the very last moment a reprieve had been expected for there were mitigating circumstances. He was "totally illiterate and as ignorant and uninformed as it is possible to imagine a boy of sixteen years of age." Besides he had been corrupted by the girl's own mother, a woman of forty-five, who had regularly cohabited with him. The gentlemen of the grand jury strongly and repeatedly forwarded representations to the Government on his behalf, but in vain. A fellow prisoner read and explained the Scriptures to him and he listened with avidity. The night before his execution four Wesleyan Methodists belonging to the chapel in Long Lane sat up with him. His behaviour in everything was passive and acquiescent.

January 21.—On the 21st January, 1784, three men and a woman were hanged before Newgate. The woman had stolen linen and clothes from Lord Teynham's house. One of the men had stolen clothes from a house in Broad Court, another had forged a seaman's will, and the third had robbed and desperately wounded a man in a field at Bethnal Green.

January 22.—Mary Moders, the daughter of a chorister in Canterbury Cathedral, had beauty, wit, courage and infinite resource. She was utterly incapable of leading a humdrum life, and her brief life was one long adventure, as strange as the romances of which the reading turned her head when she was a girl. She ran away from her first husband, a shoemaker, and married a Dover surgeon. She was tried for bigamy and acquitted, went to try her fortune on the Continent, and in the neighbourhood of Cologne captivated a rich old gentleman, whom she brought to the point of proposing marriage to her. At the last moment she made off with as many of his valuables as she could lay hands on and returned to England well provided for. In London, she passed herself off as a German Princess flying from the wrath of a powerful father who had put to death the man of her choice. She so took in everyone that the owner of the Exchange Tavern, where she lodged, promoted a match between her and his brother-in-law, John Carleton. This brought her to trial for bigamy again, but once more her wits secured an acquittal. Next the notoriety of the affair brought her engagement on the stage, but she soon returned to her true vocation of adventuress. Her favourite role was the persecuted heiress, but she was equal to any part, wittily, ingeniously, irresistibly cheating all comers. At last she was condemned to transportation, returned to England and was hanged at Tyburn on the 22nd January, 1672.

January 23.—The 23rd January was formerly the first day of Hilary Term. The judges, the Masters in Chancery, the King's Serjeants and the King's Counsel would assemble at the Lord Chancellor's house for breakfast, after which he would drive in his State carriage to Westminster Hall and they would follow. When Lord Eldon removed from Bedford Square to Hamilton Place he invited his guests to meet him instead in Lincoln's Inn Hall, and thereafter that became the custom.

BEER AND OTHER DRINKS.

Beer has lately cropped up twice in the legal small news. In far Bombay Sir Leonard Stone, C.J., entertaining twelve Servicemen at his Christmas dinner table, said: "I have got a bottle of beer for each of you, but don't ask how I got it." Nearer home, at the Lewes Assizes, Charles, J., referring to post-war income tax credits, said: "I pay thousands, literally thousands, and I got a credit note back the other day which was only just enough to buy me a pint of beer." In better times wine filled a far larger place than beer in the consciousness of Bench and Bar; the tradition of the Inns of Court could hardly allow it to be otherwise. But even the renowned Maurice Healy, K.C., author of "Stay me with Flagons" though he was, was seen drinking a pint of bitter in a Soho restaurant, and when challenged to reconcile this with his philosophy, replied: "I don't. I submit to the standard of the age." It was otherwise in the last war, which in that respect at any rate did not reduce us to the level of gastronomic barbarism. A story of the late Lord Mersey tells how during that upheaval he gave a dinner party at which one of the guests, a young officer, expressed surprise at seeing hock among the wines. "Why?" asked his host. "Because it's a German wine, sir." "Well, we intern it, don't we?"

Our County Court Letter.

Service of Process on Absentee Tenant.

IN *Copton Estates, Ltd.* v. *Hodgkins*, at Burton-on-Trent County Court, the claim was for possession of a dwelling-house, No. 30, New Street, Church Gresley, and for £8 12s. 6d. arrears of rent. The defendant did not appear. The plaintiffs' case was that they had purchased the reversion of the premises in 1937, subject to the defendant's oral tenancy, under which he paid 15s. a week rent. This had since been increased to 22s. 6d. a week. The defendant had carried on business as a printer, but he closed his business after the outbreak of war, leaving some machinery on the premises. The defendant could never be found at the premises, which were damaged by enemy action in 1941. No notice was given by the defendant, under the War Damage Acts, to the plaintiffs, who nevertheless did temporary repairs. In September, 1941, the plaintiffs issued a summons for leave to distrain, and inquiries were made in an endeavour to trace the defendant. As a result, the defendant called upon the plaintiffs' solicitors, and was informed that the plaintiffs desired possession. The defendant, however, refused to disclose his address, and the bailiffs had been unable to serve him. On the 30th November, 1942, the defendant wrote, from his parents' address, asking the plaintiffs to protect the property from damage by children. On the 9th February, 1943, the sum of £15 arrived by post from the defendant, who still did not disclose his address. The plaintiffs applied the amount in reduction of the arrears of rent. On the 28th August, 1943, a notice terminating the tenancy and addressed to the defendant, was affixed by the plaintiffs to the door of the premises. The summons in the action was served by affixing it to the premises in accordance with Ord. VIII, r. 24. His Honour Judge Willes, in a reserved judgment, observed that the case illustrated difficulties which were now of frequent occurrence. In spite of the user of part of the premises for printing, the plaintiffs conceded that they were a dwelling-house, and this affected the exercise of the courts discretionary powers under the Rent Acts. There was, however, a preliminary issue as to service. A weekly tenancy was a recurring weekly tenancy, which either party could bring to an end by communicating to the other an election so to do a week before the end of any full week of the tenancy. Such a communication was usually called a "notice to quit." It was ineffective unless the election came to the knowledge of the other party in circumstances which would justify such other party in acting upon such knowledge. The communication, however, need not be in writing, nor need it be made to the tenant personally. These principles were shown in *Alford* v. *Vickery* (1842), C. & M. 280, in which a notice to quit had been pushed under the door. By itself, this would not have constituted effective notice. The tenant's wife swore, however, that she gave the notice to her husband. Coleridge, J., held that there had been an effective termination of the tenancy. In *Tanham* v. *Nicholson*, L.R. 5 H.L. 561, the tenant was an imbecile. Notice to quit was given to his daughter, who (without reading the document) placed it on the kitchen dresser. The notice was afterwards read by one of the tenant's sons, who ran the farm. The daughter then burned the notice. This was held to be notice, effective to bind the tenant and to terminate the tenancy. In the event of a tenant disappearing, owing rent, the position could be dealt with under three of the County Court Rules. Order VIII, r. 6, provided for substituted service, but this method was to be exercised with caution. Rule 23 provided for affixing the summons to the door. Rule 24 provided for affixing the notice on the land—apparently in cases in which the premises did not include a residence or place of business which the defendant had kept closed. During the war, it was a serious matter to treat absence from houses as evidence of an intention to evade service. The tenant might have been called up, or forced to evacuate. On the other hand, a person may be deemed to intend the consequences of his actions. If, therefore, a person with known creditors, e.g., a landlord to whom arrears of rent are due, closes his house, but leaves enough goods to show he has not abandoned it, yet takes no step to show (either through the Post Office or neighbours) where he can be found—that person cannot complain if a court finds that he did not intend creditors to find him or a summons to reach him. On the evidence before him, His Honour found as a fact that knowledge of the landlord's election to terminate had reached the defendant in circumstances which would have justified the defendant in acting upon such knowledge and treating his tenancy as terminated. It was reasonable, under the Rent Acts, to make the order for possession. This was accordingly made, but (to give the defendant an opportunity to make any submission) its enforcement was suspended until the next court. The plaintiffs were awarded taxed costs.

Blitzed Premises as Builders' Store.

IN *Gould* v. *Plymouth Corporation* and *Pearn Bros., Ltd.*, at Plymouth County Court, the claim was for £184 as rent of premises used as a store for building materials by the second defendants while employed by the first defendants in repairing bomb-damaged properties. The plaintiff's case was that, although her premises had been blitzed, they were not unlettable for storage and office purposes. There was no implied agreement that the defendants should occupy her premises free of rent. His Honour Judge Scobell Armstrong held that the plaintiff was entitled to £26 2s. 1d. The first defendants' case was that they only had a statutory right to enter blitzed premises for the purpose of urgent repair, as the second defendants knew or ought to have known. It was denied that a corporation inspector had given orders to the builders' foreman to enter the plaintiff's premises and use them as a store. The second defendants' case was that they were authorised by the corporation inspector to utilise the premises of the plaintiff, who was understood to have given free accommodation for the materials stored there. His Honour held that the inspector had not given the alleged order. The builders hoped and expected that owners generally would allow their buildings to be used gratis. Such a graceful gesture, however, might be easier for some than others. A right to use and occupy other people's property could not be founded upon hopes and expectation, but only upon law. The second defendants were liable for the sum awarded to the plaintiff, and judgment was given accordingly, with costs.

Obituary.

MR. E. CAWLEY.

Mr. Edward Cawley, solicitor, of Tarporley, Cheshire, died on Friday, 7th January, aged seventy-seven. He was admitted in 1893 and had held several public appointments.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Tax on Annuity.

Q. An annuitant receives the current year's annuity together with three years' arrears. Tax has been deducted from the total payment at the standard rate in force for the current year. Does the total payment represent the annuitant's income for the year of payment, or can the arrears be allocated to the respective years in which they fell due and in which they ought to have been paid? In the latter event the annuitant will be entitled to recover the whole of the tax deducted from the total payment, on the basis of her statutory allowances for four years. On the other hand, if the total payment is deemed to be her income for the current year, she would appear entitled to repayment of tax in respect of her statutory allowances for one year only. Apropos the above, will the total payment made by the settlor be charged against his income for the current year, when it would be covered by his taxable income already charged at the full standard rate, or will the arrears be allocated to back years. In the latter event it might be necessary for additional assessments to be made on the settlor, if for back years the settlor's taxable income charged at the full standard rate did not cover the annuity in any particular year.

A. The Inland Revenue ruling on this point will almost certainly be that the total payment does not represent the annuitant's income for the year of payment and that the arrears should be allocated to the respective years in which they fell due. Hence it is not correct to deduct tax at 10s. in the £ from the whole payment, because part of it relates to earlier than the year 1941–42 when the standard rate was increased to 10s. in the £. Reference should be made to s. 39 (2) of the Finance Act, 1927, which reads as follows :—

" In estimating under the Income Tax Acts the total income of any person, any income which is chargeable with income tax by way of deduction at the standard rate in force for any year shall be deemed to be income of that year, and any deductions which are allowable on account of sums payable under deduction of income tax at the standard rate in force for any year out of the property or profits of that person shall be allowed as deductions, in respect of that year, notwithstanding that the income or sums, as the case may be, accrued or will accrue in whole or in part before or after that date."

It seems clear, therefore, that the arrears of annuity should be allocated to the respective years to which they relate and that it is incorrect to deduct tax at 10s. in the £ for any period falling before 6th April, 1941. As the annuitant in the present case is exempt from tax it is specially important to secure allocation of the annuity to each year concerned. So far as the settlor is concerned, the position is that there should be sufficient income charged at the standard rate for each of the years concerned to cover the annuity. If the Inland Revenue are aware of the existence of the annuity it is surprising that sufficient of the settlor's income has not been kept in charge at the standard rate for each year in order to cover the annuity. The fact that payments of an annuity are in arrear does not usually deter the Inland Revenue from keeping the amount in charge at the standard rate in assessing the settlor's income for each tax year. Normally it is only when an annuity or other charge on a taxpayer's income has been waived entirely that the Inland Revenue will agree to cancel payment of tax on charges. If in the present case the settlor has not paid sufficient tax at the standard rate to cover the annuity in any of the fiscal years concerned, the Revenue will presumably raise additional assessments. The Inspector of Taxes dealing with the case should be asked to indicate his view as to the correct treatment of the matter, but in our view allocation to each tax year concerned is the right method according to s. 39 (2) of the 1927 Act.

Puisne Mortgage—Transfer and Further Charge.

Q. A second mortgage, which was duly registered under the Land Charges Act, is now being transferred and the transferee is at the same time making a further advance. Should the existing registration be cancelled and a new registration on behalf of the transferee effected, or is the existing registration sufficient? The note on Form L.C.8 appears to contemplate a future application for cancellation by a transferee. If the existing registration is cancelled possibly another incumbrancer might obtain priority. If the existing registration should not be cancelled, is it necessary to register the further charge as a land charge on behalf of the transferee?

A. The originl registration should remain, and the further charge should be registered separately in our opinion.

Mr. Arthur Armistead Bracewell, solicitor, of Barrowford, left £24,570.

Mr. Harry Graeme Vassall, solicitor, of Bristol, left £24,796, with net personalty £19,517. He left twenty-five guineas to the Solicitors' Benevolent Association.

Correspondence.

[The views expressed by our correspondents are not necessarily those of The Solicitors' Journal.*]*

Services Divorces.

Sir,—As Hon. Secretary of one of the Provincial Law Societies most of the applications for legal aid in divorce cases within the area of this Society pass through my hands. I am impressed by the enormous and increasing number of applications for aid in divorce cases by men in His Majesty's Forces.

In normal times of peace it may be right for the State to treat divorce as a mere civil matter between the parties to the marriage, but in time of war, when the State has called upon the husband to leave his home in his country's service, it is surely incumbent upon the State to do something more positive to protect the soldiers' or sailors' homes from such desecration than merely to add the final legal touches to the breaking up of what is to the soldier perhaps more precious than life.

I suggest that legislation should be promoted to make misconduct by or with the wife of any man in His Majesty's Forces who is away from his home on service a criminal offence punishable by heavy penalties. This might not prevent such events altogether, but, if it averted even a small number of such disasters, it would be worth while and would show that the people of this country had a conscience and condemned the people who offended.

" It must needs be that offences come, but woe unto that man by whom the offence cometh."

Sydney G. Cox,
Hon. Sec.,
The Suffolk & North Essex Law Society.

Ipswich.
17th January.

Jurisdiction of the Courts.

Sir,—I have read with great interest the " Current Topics " in your issue of the 8th January (p. 9) on the subject of my friend Sir John Beaumont's letter to *The Times*, followed by the further letters from Mr. Justice Asquith and Lord Justice MacKinnon.

With over forty years' active legal practice and the benefit of hearing much of the earlier system from my father who was admitted in 1861, I should like, as you do, respectfully to concur in the conclusions at which Mr. Justice Asquith arrived on Sir John Beaumont's letter.

I would, however, suggest that remedies may be found in other directions, as I ventured to indicate in a paper which I addressed to The Law Society's Provincial Meeting in September, 1934, namely, the better conservation of the time of His Majesty's judges, and of the lawyers, parties and witnesses who have to appear before them.

Speaking in the House of Commons on the 26th July, 1934, the then Attorney-General admitted that, except for a very few weeks of the legal year, over half the courts in the King's Bench Division are empty. To-day the proportion would be greater. Allowing for luncheon intervals, interrupting applications, etc., the average effective time devoted to trials in open court does not exceed eighteen hours per judge per week.

Much of the judicial time in open court under the present system is devoted to the reading of documents, statutes and law reports. These need hardly be read aloud in the presence of lawyers, parties and witnesses, if the relevant documents could be agreed and delivered beforehand to the trial judge with a list of the statutes and authorities on which counsel on either side intend to rely. Arguments could be presented in writing, on the principle of the written " case " adopted in the House of Lords.

This procedure would be a great saving of judicial time, as before the trial the judge would have studied the pleadings, documents, statutes, authorities and written arguments, leaving as the only steps to be taken in open court the examination of witnesses, addresses on the evidence, and arguments on the law.

As the courts now sit only five days a week during term time, cases would be disposed of more expeditiously if court hours ordinarily were from 10 to 1 and 2 to 5. This continuity would save many days of judicial time and mental effort in picking up the threads of an interrupted case and would help to abolish the very unsatisfactory " queue " system by facilitating fixed dates for trial, enabling all parties to make their arrangements accordingly. They cannot do so under the present system.

London, E.C.2.
10th January.

Charles L. Nordon.

Notes of Cases.

HOUSE OF LORDS.

Egham and Staines Electricity Company, Ltd. *v.* Egham Urban District Council.

Viscount Sankey, Lord Thankerton, Lord Russell of Killowen, Lord Macmillan and Lord Wright. 15th December, 1943.

Contract—Emergency legislation—Agreement for supply of electricity for street lighting—Force majeure *clause—Lighting prohibited—Liability to continue payments under contract.*

Appeal from a decision of the Court of Appeal (MacKinnon, L.J., Lord Clauson and Goddard, L.J.) reversing a decision of Cassels, J.

By three agreements dated the 17th November, 1933, the 15th July, 1935, and the 16th February, 1937, made between the appellant company and the respondent urban district council, the company agreed to supply and the council to take electricity for the purpose of lighting the streets and roads in the council's urban district. The agreements provided for the supply of electrical energy by the company, for the lighting of the lamps specified in the agreement, for the repair and maintenance of lamps, lamp standards and other equipment by the company, and for the rates of payment by the council in respect of each lamp. The duty of lighting and extinguishing the lamps was placed on the company. The question at issue between the parties was as to the construction of a *force majeure* clause in all three agreements. It provided that " . . . no default by the company under this agreement shall render the company liable in damages if and so far as such default shall arise or be occasioned by fire, frost, strikes, lock-outs or combination of workmen or cessation or restriction of work by workmen or from any other unavoidable cause over which the company has no control: Provided always that all payments under this agreement by the council shall abate in the same proportion as the supply shall be curtailed by reason of any event provided for in this clause." On the outbreak of war the Lighting (Restriction) Order, 1939, the Light (Restrictions) (No. 2) Order, 1939, and the Light (Restrictions) Order, 1940, made the display of lights in streets unlawful from the 1st September, 1939. The company accordingly ceased to light any of the lamps under the three agreements. The company in this action claimed the amounts due under the agreements in respect of the lamps. Cassels, J., gave judgment for the company. The Court of Appeal reversed his decision. The company appealed.

LORD RUSSELL OF KILLOWEN said that it was contended for the company that the supply had not been in fact curtailed, because the current had in fact been supplied up to the point of its entry into the lamps, and that was the supply which was contracted for and which was referred to in the *force majeure* clauses, and secondly, even if the supply had been curtailed, the proviso could only operate in favour of the council if there had been a default by the company within the meaning of those clauses, and that no such default had occurred. He was unable to accept either contention. The contract was not merely to supply current, but to proceed to light the lamps. There was a curtailment of supply within the proviso. Further, the curtailment of the supply had taken place by reason of the lighting restriction orders, an unavoidable cause over which the company had no control. The proviso therefore came into force, and since the curtailment was such that the supply ceased *in toto* the proportionate abatement must result in the complete exoneration of the council from liability to pay until the supply was renewed. The appeal must be dismissed.

The other noble and learned lords agreed in dismissing the appeal.

COUNSEL: *Wallington*, K.C., and *H. Malone*; *Havers*, K.C., and *Fortune*.

SOLICITORS: *Burton, Yeates & Hart*, for *Horne, Engall & Freeman*, Staines; *Torr & Co.*, for *Pound & Pound*, Egham.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Richardson *v.* Redpath, Brown & Co., Ltd.

Viscount Simon, L.C., Lord Thankerton, Lord Russell of Killowen, Lord Macmillan, and Lord Wright. 15th December, 1943.

Master and servant—Workmen's compensation—Total incapacity—Refusal of workman to undergo operation—Whether refusal "unreasonable"—Examination of workman by medical assessor—Duties of assessors and referees—Workmen's Compensation Act, 1925 (15 & 16 *Geo.* 5, *c.* 84), *s.* 38, *First Schedule, para.* 11.

Appeal from a decision of the Court of Appeal (MacKinnon, L.J., Lord Clauson and Goddard, L.J.), dismissing an appeal from a decision of Sir Gerald Hurst, given at Westminster County Court.

The workman, the appellant, met with an accident in 1937, while in the employment of the respondents, which resulted in a rupture. He was operated upon in that year but the operation was only partially successful, and he was paid weekly compensation on the basis of total incapacity. In December, 1941, the respondents' applied for a review of the weekly payments on the ground that the workman's continuing incapacity was due to his unreasonable refusal to submit to suitable medical treatment, namely a further surgical operation. The respondents called three doctors, who expressed the opinion that the operation was advisable and should be successful. The workman stated that he was advised not to undergo such an operation and called two other medical men of high standing in support of his case. At the hearing the learned county court judge intimated that the medical assessor would like to examine the workman. He did examine the workman and reported in favour of the operation. The judge, then, basing his decision on the advice of his medical assessor, awarded that all payments under the Workmen's Compensation Act, 1925, should be suspended. The workman appealed.

Viscount SIMON, L.C., said that it was neeessary to draw a clear distinction between the functions under the Acts of a medical referee and of a medical assessor. Medical referees were appointed under s. 38 of the Act of 1925. Under ss. 16 and 19 a medical referee might be called upon to give a certificate. In both cases the certificate was conclusive as to the matters so certified. Under para. 11 of the First Schedule a judge might submit to a medical referee "for report any matter which seems material to any question arising in the arbitration." Two things were to be noted in connection with the duties laid on referees. In every case the workman was required to submit himself for examination by the referee. The referee, after such examination, made a written report of his conclusion. In every case it was implied that the contents of the report would be open for inspection by the parties. The parties knew what was the question the referee had been asked and how he had replied. Contrast that with the position of the parties in a case such as the present, where the medical assessor was given no statutory authority to examine the workman and was under no obligation to disclose his opinion to anyone but the judge. The view of the medical assessor, based on his private examination of the workman, was improperly introduced into the case and as the judge's decision was based on the assessor's advice, it could not stand. They were told it was quite common for the medical assessor to make an examination of the workman and to report his opinion to the judge. He proposed that the House should definitely lay it down that it was not part of the functions of a medical assessor, as such, to conduct a personal examination of the workman or to report the effect of the examination and his deductions from it to the judge. If the judge found himself with a difficult decision, he had power under para. 11 of the First Schedule, at the end of the medical evidence, to submit the medical issue duly defined to a medical referee. As the medical assessor was on the panel of medical referees, it might be convenient for the judge to choose the assessor for the purpose. The decision of the Court of Appeal in *Smith* v. *Foster* [1913] 6 Butterworth W.C.C. 498, that a medical assessor might examine a workman and communicate his opinion privately to the judge was wrong and must be overruled. Further, it had been laid down by the House that whether a workman was unreasonable in refusing to undergo an operation was not to be determined by considering whether the best medical opinion thought such an operation advisable or safe, but by judging whether it was proved that the workman, having regard to all circumstances (including the medical advice offered to him against the operation), was unreasonable in so refusing: *Steele* v. *Robert George & Co.* [1942] A.C. 497, at p. 500. There was no evidence that the workman had acted unreasonably. The appeal must be allowed.

The other noble and learned lords agreed.

COUNSEL: *Paull*, K.C., and *J. H. C. Goldie*; *Lynskey*, K.C., and *W. H. Duckworth*.

SOLICITORS: *W. H. Thompson*: *Carpenters*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

COURT OF APPEAL.

Bishop and Baxter, Ltd. *v.* Anglo-Eastern Trading and Industrial Co., Ltd.

Scott, MacKinnon and Goddard, L.JJ. 25th October, 1943.

Contract—Order of goods at a price—Order accepted subject to a war clause—No consensus ad idem—Acceptance equivalent to counter-offer—No contract.

Appeal by plaintiffs from a judgment of Atkinson, J., in an action for the price of goods sold and delivered in which the defendants had received judgment on a counter-claim for damages for alleged breach of contract in repudiating a written contract to sell 20,000 woollen cardigans. The plaintiffs had delivered 3,000 cardigans, for 1,872 of which they had been paid and they claimed the price of the remainder. The learned judge entered judgment for £704 19s. 4d., being the charges in respect of the 17,000 cardigans, less the amount due to the plaintiffs for the balance of the 3,000 cardigans. The alleged contract for the sale of the 20,000 cardigans was contained in letters of 27th May and 2nd June, 1942, the first of which purported to be an "order" for 20,000 wool cardigans at specified prices. By the reply of 2nd June, 1942, the order was accepted subject to "war clause."

SCOTT, L.J., delivering the judgment of the court, said that in June, 1942, the internal disorganisation of normal manufacturing and mercantile conditions in England, as a result of the country's concentration on the war effort, made it natural for a seller of woollen goods to seek the protection of a war clause in his contract. Until the parties had met and agreed on a particular form and content of a war clause, there was and could be no *consensus ad idem*. In June, 1942, there were many forms of war clause. The contract, therefore, on which judgment was given never came into existence. His lordship referred to *Lowe and Stewart, Ltd.* v. *Instone, Ltd.*, 33 T.L.R. 475, and *Scamell* v. *Ouston* [1941] A.C. 251. The appeal would be allowed.

COUNSEL: *Phineas Quass*; *P. Devlin*.

SOLICITORS: *Abbott, Anderson, Braithwaite & Whittaker*; *Dehn and Lauderdale*.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

APPEAL FROM COUNTY COURT.

Re D. S. Smith.

Scott, L.J., and Simonds, J. 22nd November, 1943.

Emergency legislation—Liabilities Adjustment Order—Application to vary order—When granted—Challenge to validity of order—Challenge to be made by way of appeal only—Liabilities (War-Time Adjustment) Act, 1941 (4 & 5 *Geo.* 6, *c.* 24), *s.* 10 (2).

Appeal by mortgagees of premises belonging to the debtor against the refusal by His Honour Judge Rowlands, sitting at Lowestoft County Court, to vary or amend a liabilities adjustment order.

The order was made on 5th March, 1943, and it (*inter alia*) determined the rights of the debtor's secured creditors, including the appellants. On 29th June, 1943, the appellants applied to the county court for a variation and amendment of the order by providing for payment to them of certain mortgage interest out of the rents and profits of the property of which they were mortgagees. The learned judge refused the application, and on the appeal it was argued for the appellants that the adjustment order was at least in part invalid as the learned judge was not competent under the Liabilities (War-Time Adjustment) Act, 1941, to make or omit such provisions in regard to mortgagees as the order contained or omitted. It was also argued that the county court judge, even if he had power to make the order, had not properly exercised his discretion in making it. Counsel for the liabilities adjustment officer, however, whose duty it was to assist the court, took the preliminary point that the appellants' application of 29th June, 1943, was out of order and should not have been entertained by the learned county court judge and should not be entertained by the Court of Appeal, on the ground that the appellants were not a "creditor whose debt has been proved" within s. 10 (2) of the Liabilities (War-Time Adjustment) Act, 1939. That subsection provides: "Any liabilities adjustment order or protection order may, on the application of the debtor or of any creditor whose debt has been proved or of the liabilities adjustment officer, be varied by a subsequent order." The appellants were a building society and they claimed to be mortgagees of 3, Wash Lane, Kessingland, Suffolk.

SIMONDS, J., delivering the judgment of the court, said that the preliminary point succeeded. The society was not a creditor whose debt had been proved and was not, therefore, a person competent to apply under the subsection. Nor, if the society was a competent applicant, did the application to vary fall within the subsection. The subsection aimed at empowering the court to vary or amend its original order where circumstances had changed, or perhaps unknown circumstances had come to light It could not be interpreted so as to give a person challenging the validity of an order a right of appeal from it by way of an application to vary after the time for appeal to the Court of Appeal had expired, and then an appeal to the Court of Appeal from a refusal to vary. Faced with this difficulty, counsel had urged that the application to vary was not made under s. 10 (2), but under the order, which provided that the adjustment officer or any party thereto might apply to the court for such variation of the order as might become necessary, as he, she or they might be advised. Assuming, without deciding that it was competent for the county court judge to reserve to the appellants a right to apply to vary the order, he could not give them, nor did the order, when fairly interpreted, give them, the right to challenge the validity of the order at any time thereafter. That challenge could only be made by way of appeal to the Court of Appeal and within the time prescribed by the rules or such further time as the court allowed. The appeal was dismissed.

COUNSEL: *M. P. Solomon; Valentine Holmes.*

SOLICITORS: *E. F. Iwi*, for *Birkett, Ridley & Cox*, Ipswich; *The Treasury Solicitor.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

In re Becker; Becker *v.* Templeton.

Uthwatt, J. 9th December, 1943.

Administration—Insolvent estate—Order for administration made in 1919—*Creditor values his security in* 1923—*Admitted to prove for balance of debt—Security increases in value—Jurisdiction to grant leave to amend valuation in* 1943—*Bankruptcy Act*, 1914 (14 & 15 *Geo.* 5, *c.* 59), *Second Schedule*, *r.* 14.

Adjourned summonses.

The Bankruptcy Act, 1914, Second Schedule, r. 14, provides: "Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the trustees, or the court, that . . . the security . . . has increased in value." B died on the 11th February, 1919, insolvent, and on the 17th March, 1919, an order was made in a creditor's action for the administration of his estate. P, who was assignee of two debts, charged on a certain reversionary interest, valued her security at £2,000, and proved for the balance of the debts. The Master made his certificate on the 21st June, 1923, and P was admitted as a creditor for £1,274 12s. 11d., being the balance of the debts and interest. In 1940 the reversionary interest fell into possession, and the sum of £4,350 15s. became payable in respect of it. The trustee thereupon tendered to P's personal representative £2,536 9s. 3d., representing the £2,000, at which the security had been valued, together with interest and claimed to redeem the security. P's personal representative refused the tender and took out this summons for an order that he might be at liberty to amend the valuation of the security for his debts and his proof in respect of such debts by valuing the security at £4,350 15s., on the ground that the security had increased in value, and that the time for varying the Master's certificate might be extended.

UTHWATT, J., said that Vaughan Williams, J., in *In re Newton* [1896] 2 Q.B. 403, at p. 406, referring to *Ex parte Norris*, 17 Q.B.D. 728, had said "I think the Court of Appeal meant to say, as a matter of principle, that the rule" (now r. 14 of Sched. II of the Act of 1914) "ought so to be construed as to give the creditor the right to amend, unless by something which has happened the position of the trustee and the creditor has become so altered that the rights of the parties concerned may be considered to be fixed on the basis of the valuation." He agreed with that statement. So long as there had been no alteration in the position of the parties, there was no reason why the creditor should not be allowed to amend. There was no indication that anyone here would suffer injustice by amendment. The discretion to give leave to vary was conferred by the general law and ought not to be limited by matters of practice in the Chancery Division. He approached the question of varying the certificate on the footing that there was a discretion to give the creditor leave to amend his valuation and that this discretion ought to be exercised. If the matter were approached in that way, it became easy. He would accordingly give leave to extend the time to vary the certificate.

COUNSEL: *R. Jennings; Droop; Pascoe Hayward.*

SOLICITORS: *Joynson-Hicks & Co.; Shirley Woolmer & Co.; Theodore Goddard & Co.*, incorporating *Smith, Rendell, Dodds & Beckett.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Jenkins Productions, Ltd. *v.* Inland Revenue Commissioners.

Macnaghten, J. 25th October, 1943.

Revenue—Excess profits tax—Standard profits—Determination of accounting period for purpose of calculating standard profits—Whether determination of accounting period on basis of successive accounting periods of twelve months or successive accounting periods of six months—Finance Act, 1937 (1 *Edw.* 8 & *Geo.* 6, *c.* 54), *s.* 20 (2) (*a*) (*c*)—*Finance* (*No.* 2) *Act*, 1939 (2 & 3 *Geo.* 6, *c.* 109), *ss.* 13, 14, 22 (*e*), (*f*).

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

This was an appeal from a decision of the Special Commissioners confirming an assessment to excess profits tax made on the J company under the provisions of Pt. III. Finance (No. 2) Act, 1939, in the sum of £1,207 11s. 9d. Excess profits are the amounts whereby the profits arising from a trade or business computed in the manner directed by the Act for a "chargeable accounting period," as defined by s. 22 (*e*), exceed the standard profits which are computed in the same way for its standard period, as defined by s. 13. The company, as it was entitled to under s. 13 (4), chose the year 1935 as its standard period. It was, therefore, necessary for the purpose of the assessment in question to ascertain the profits of the company for the year 1935. Under the somewhat complicated provisions of the Finance Act, 1937, s. 20 (2), the Finance (No. 2) Act, 1939, s. 14 (1), and s. 22 (*f*), the ascertainment of the company's profits for the year 1935 depended on the question whether the accounts of its business were "made up for successive periods of twelve months" within the meaning of those words in the Act of 1937, s. 20 (2) (*a*), or whether they should be made up for other successive periods within the meaning of s. 20 (2) (*c*). The subsection had reference to national defence contribution, it being provided by s. 22 (*f*) of the 1939 Act that both the standard and chargeable accounting periods of a trade or business should be determined in the same manner as the accounting periods are determined by s. 20 (2) of the 1937 Act. That subsection provides as follows: "(2) For the purposes of national defence contribution, the accounting periods of a trade or business shall be determined as follows—(*a*) in the case where the accounts of the trade or business are made up for successive periods of twelve months, each of those periods shall be an accounting period; . . . (*c*) in any other case the accounting periods of a trade or business shall be such periods not exceeding twelve months as the Commissioners of Inland Revenue may determine; . . ." The company's accounts were made up half-yearly, namely, for the periods 1st January to 30th June and 1st July to 31st December respectively, but at the annual general meeting of the company only a yearly account was presented, made up to 30th June of the respective year and based on the accounts of the half-years ending 31st December, and 30th June respectively. The Special Commissioners held that the accounts were made up for the successive periods of twelve months ending 30th June, and, therefore, in accordance with the provisions of s. 20 (2) (*a*) of the 1937 Act, the profits of the business for the standard year 1935 had to be ascertained by adding together the profits for the two years ending 30th June, 1935 and 1936, and dividing the result by two. During the six months of 1936 ending 30th June, 1936, the company sustained a considerable loss, and the inclusion of that half-year in the periods taken, for the purpose of ascertaining the profits of the "standard year" made the "standard profits" less than they would have been if the profits actually made in 1935 had been taken as the standard profits, and they contended that the accounts were made up for successive periods of six months, namely, 1st January to 30th June and 1st July to 31st December, 1935.

MACNAGHTEN, J., held that the accounts in question were not "accounts made up for successive periods of twelve months" within the meaning of the Finance Act, 1937, for they were never "made up" for any period of twelve months, but they were only made up for periods of six months, and the accounts presented to the shareholders at the annual general meetings of the company were merely an aggregation of the two half-yearly accounts. It was, therefore, for the Commissioners to determine what periods should be taken for the purpose of ascertaining the standard profits of the company in 1935, and they could only properly select periods of six months, and, furthermore, they were bound to select the two half-years of 1935, because they could not select a period which fell wholly outside the standard period. The Special Commissioners, therefore, erred on a matter of law in deciding that the accounts presented at the meeting were "accounts made for successive periods of twelve months" within the meaning of s. 20 (2) (*a*) of the Act of 1937. The case should be remitted for the revision of the assessment when the standard profits have been determined by the Commissioners, and the appeal would be allowed.

COUNSEL: *N. E. Mustoe; The Attorney-General* (Sir Donald Somervell) and *R. P. Hills.*

SOLICITORS: *Nordon & Co.: Solicitor of Inland Revenue.*

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

Isaacs *v.* Barclays Bank, Ltd.

Tucker, J. 4th November, 1943.

Banker and customer—Securities transferred from French bank to London and New York—Capitulation of France—Suspense account opened in London—French agency opened by London bank—Formation of relationship of banker and customer—Right of customer to return of securities.

Action for declarations relating to the return of certain securities.

The plaintiff was a British subject who resided at Nice, in France, from 1927 until 21st June, 1940, when he left for Lisbon, in Portugal. Nice became enemy territory for the purpose of the Trading with the Enemy Act, 1939, and the war legislation, on 10th July, 1940, after the plaintiff left France. For some years before he left France he had an account at Barclays Bank (France) Ltd. By S.R. & O., 1940, No. 1476, made on 13th August, 1940, Monaco became enemy territory. In March, 1939, the Monte Carlo branch of the French bank, at the plaintiff's request, sent a number of his sterling securities to London and dollar securities to New York. The former were sent to Barclays Bank, Ltd., London, and the latter to Barclays (Dominion Colonial and Overseas) Bank, Ltd., of New York. In July, 1940, the manager of the Monte Carlo branch arrived in London and he was put in charge of a London agency at the head office through which the French bank at their head office proceeded to collect the interest on all the sterling securities of the plaintiff and credited them to "suspense account," which they kept. The plaintiff got into communication with the English bank and was told of what was being done. He asked them to obtain a refund of income tax and perform other small services with reference to the securities, which they did, and they incurred certain small expenses which were duly debited to him in his account at head office. The plaintiff then claimed that he had the right to have the securities handed over to him, but the defendants contended that authority must first be obtained from Monte Carlo, and that he would be unlikely to get such authority unless he also got the consent of the exchange authorities of that country under the law of Monaco.

Tucker, J., said that as from the time of the capitulation of France, to all intents and purposes the head office in London, by their London agency, stepped into the shoes of the Monte Carlo branch for all purposes connected with the securities. It was beside the point that they called the plaintiff's account a suspense account. The relationship of banker and customer existed between them and if he was wrong about that, there was a contractual relationship which enabled the plaintiff to claim from the head office of the French bank the return of his securities or the payment of the interest collected thereon if he was so minded. The plaintiff was therefore entitled to the declarations as claimed, and it was not contested that they should be subject to the provisions of the Defence (Finance) Regulations, 1939, the Trading with the Enemy (Custodian) Order, 1939, and the Law of the United States of America.

Counsel: *Scott Cairns; H. G. Robertson.*

Solicitors: *Gregory, Rowcliffe & Co.*, for *Addleshaw, Sons & Tatham*s, Manchester; *Durrant Cooper & Hambling.*

[Reported by Muarice Share, Esq., Barrister-at-Law.]

Summers *v.* Roberts.

Lord Caldecote, L.C.J., Macnaghten and Tucker, JJ. 24th November, 1943.

Pharmacy and medicines—Sale "at a shop"—Board on trestles in Market Place—Not a "shop" within Act—Pharmacy and Medicines Act, 1941 (4 & 5 *Geo.* 6, c. 42), *ss.* 12 (2), 19 (1).

Appeal by special case from a conviction by the stipendiary magistrate sitting at Leeds, under s. 12 (2) of the Pharmacy Act, 1941, for the offence of selling by retail a certain medicinal article, unless the sale was effected at a shop. The appellant sold the article by retail at a stall, consisting of a plank upon two trestles in the Leeds City Market.

By s. 17 of the 1941 Act "shop" has the same meaning as in the Shops Act, 1912, which defines "shop" (in s. 19 (1), as including "any premises where any retail trade or business is carried on."

Lord Caldecote, L.C.J., said that the word "shop" had to be interpreted with reference to the object and scope of the Pharmacy Act, 1941 (*Pope* v. *Whelley*, 6 B. & S. 303, *per* Blackburn, J., at p. 310). The Pharmacy Act, 1941, clearly provided machinery by which the status of the profession or the trade would be raised or maintained. The Act, as a whole, contemplated a permanent place where a regular business was carried on in a place which had limits which were precisely defined. It had been argued that the only test was to see whether or not a retail trade was carried on. But it was necessary in addition to consider whether there were any premises in the proper meaning of the word at which a retail trade was carried on. But the definition given by the Act must be read as including a place defined by precise limits with some structure upon it at which a retail trade was carried on. That view was not in any way affected by the *dicta* of Lord Trevethin, C.J., and Avory, J., in *Dennis* v. *Hutchinson* [1922] 1 K.B. 693. Lord Hunter's statement, in *Inland Revenue* v. *Caplan* (1930), S.C. 512, was not a satisfactory statement with reference to a shop as it had to be interpreted in the Pharmacy Act, 1941. The question decided in *Wallace* v. *Dixon* (1917), 2 I.R. 236, was not the question in the present case but it was quite obvious "that the Legislature meant to give an extended and unnatural meaning to the word 'shop' a meaning that went far beyond the popular and recognised meaning of the word" (*per* Pim, J., at p. 247). In this case the place was not bounded by ascertainable marks or fences, the only structure was two trestles and a board, and there was no continuity or regularity except that business took place twice a week. The place was not a shop. The appeal was dismissed.

Macnaghten and Tucker, JJ., concurred.

Counsel: *C. R. Havers*, K.C., and *J. M. McLusky; E. Holroyd Pearce.*

Solicitors: *Corbyn, Greener & Cook; Thompson, Quassel & Co.*

[Reported by Maurice Share, Esq., Barrister-at-Law.]

Circuits of Judges.

WINTER ASSIZES.

South Eastern.—Lord Chief Justice: Huntingdon, Jan. 13; Cambridge, Jan. 15; Bury St. Edmunds, Jan. 20; Norwich, Jan. 27; Chelmsford, Feb. 7. Lawrence, J.: Hertford, Feb. 16; Maidstone, Feb. 21; Kingston, Feb. 29; Lewes, March 8.

N. Wales.—Hilbery, J.: Welshpool, Jan. 25; Dolgelley, Jan 31; Caernarvon, Feb. 3; Beaumaris, Feb. 10; Ruthin, Feb. 15; Mold, Feb. 21. Hilbery and Croom-Johnson, JJ.: Chester, Feb. 23; Cardiff, March 7.

S. Wales.—Croom-Johnson, J.: Haverfordwest, Jan. 27; Lampeter, Jan. 31; Carmarthen, Feb. 3; Brecon, Feb. 14; Presteign, Feb. 17; Hilbery and Croom-Johnson, JJ.: Chester, Feb. 23; Cardiff, March 7.

Western.—Singleton, J.: Devizes, Jan. 12; Dorchester, Jan. 18; Taunton, Jan. 25; Bodmin, Feb. 1. Atkinson and Singleton, JJ.: Exeter, Feb. 9; Bristol, Feb. 17; Winchester, Feb. 28.

Northern.—Oliver, J.: Appleby, Jan. 8; Carlisle, Jan. 10; Lancaster, Jan. 17. Oliver and Birkett, JJ.: Liverpool, Jan. 24; Manchester, Feb. 28.

Oxford.—Macnaghten, J.: Reading, Jan. 11; Oxford, Jan. 17; Worcester, Jan. 24; Gloucester, Jan. 29; Newport, Feb. 5; Hereford, Feb. 12; Shrewsbury, Feb. 17. Macnaghten and Stable, JJ.: Stafford, Feb. 26. Lewis and Stable, JJ.: Birmingham, March 11.

Midland.—Charles, J.: Aylesbury, Jan. 6; Bedford, Jan. 12; Northampton, Jan. 17; Leicester, Jan. 24; Oakham, Feb. 2; Lincoln, Feb. 3; Derby, Feb. 15; Nottingham, Feb. 24. Lewis, J.: Warwick, March 6. Lewis and Stable, JJ.: Birmingham, March 11.

North-Eastern.—Wrottesley and Hallett, JJ.: Newcastle, Jan. 31; Durham, Feb. 9; York, Feb. 19; Leeds, Feb. 28.

Note.—The following judges will remain in town: Humphreys, J., Tucker, J., Asquith, J., and Cassels, J.

War Legislation.

Statutory Rules and Orders, 1943 and 1944.

E.P. 2. **Apparel and Textiles.** Rubber and Industrial Footwear Directions, Jan. 7.

E.P. 5. Apparel and Textiles. Utility Apparel (Infants' and Girls' Wear) Directions, Jan. 7.

E.P. 4. Apparel and Textiles. Utility Apparel (Men's and Boys' Shirts) (Underwear and Nightwear) (No. 4) Directions, Jan. 7.

No. 10. **Children and Young Persons, England.** Approved Schools. The Children and Young Persons (Contributions by Local Authorities) Regulations, Jan 3.

E.P.7. **Coal Mines.** The Coal Mining (Training and Medical Examination) Order, Jan. 1.

No. 1785. **Contributory Pensions** (Voluntary Contributors) Amendment Regulations, Nov. 16.

E.P. 8. **Food** (Points Rationing) Order, Jan. 5, amending the Food (Points Rationing) (No. 3) Order, 1943.

No. 15. **Goods and Services** (Regulation of Disposal of Stocks). General Licence, Jan. 7, under Price Control (Regulation of Disposal of Stocks) Act, 1943.

E.P. 1788. **Mental Nurses** (Employment and Offences) Order (Scotland) Dec. 31.

No. 1786. **National Health Insurance** (Arrears) Amendment Regulations, Dec. 21.

No. 1787. **Wild Birds** (Administrative County of Northumberland) Order, Dec. 29.

Notes and News.

Honours and Appointments.

Mr. Gilbert Griffiths has been appointed Recorder of Dudley in succession to Mr. Eric Sachs, K.C., who has been appointed Recorder of Stoke-on-Trent. Mr. Griffiths was called by the Inner Temple in 1925, and Mr. Sachs by the Middle Temple in 1921.

Notes.

The Judicial Committee of the Privy Council begin their Hilary Sittings on Tuesday, 25th January, with a list of twenty-three appeals, of which nineteen are from India and one each from Canada, Cyprus, Somaliland, and Palestine. One judgment awaits delivery.

An ordinary meeting of the Medico-Legal Society will be held at Manson House, 26, Portland Place, W.1 (Tel.: Langham 2127), on Thursday, 27th January, at 4 p.m., when a paper will be read by W. Norwood East, M.D., F.R.C.P., on "Responsibility and Culpability."